

EMPLOYMENT CONTRACT

This employment contract is entered into as of August 5, 2009, between the Kentucky Board of Education of the Commonwealth of Kentucky ("Board") and the Commissioner of Education ("Commissioner") in order to enhance administrative stability and progress within the elementary and secondary education system of Kentucky.

1. **TERM.** The Board employs Dr. Terry Holliday as Commissioner of Education for a four (4) year term beginning August 5, 2009 through August 4, 2013. If the Board decides not to renew or extend this Agreement, it shall provide written notice of that circumstance to the Commissioner no later than ninety (90) days before the expiration of the Agreement.
2. **PROFESSIONAL DUTIES AND RESPONSIBILITIES.** As provided in KRS 156.148(2) and 156.010, the Commissioner shall be the executive and administrative officer of the Board in its administration of all educational matters and functions placed under its management and control. The Board, individually and collectively, may refer all criticism, complaints and suggestions called to its attention to the Commissioner. The Commissioner shall have the right to attend all Board meetings and all Board committee meetings, serve as an ex-officio, non-voting member of all Board committees and provide administrative recommendations on each item of business considered by each of these groups. No policy or bylaw of the Board shall diminish the Commissioner's power of authority as prescribed in law. Moreover, all duties assigned to the

Commissioner by the Board shall be appropriate to and consistent with the professional role and responsibility of the Commissioner.

The Commissioner shall devote his full time, attention and energy to the business of the Commonwealth's public schools. The Commissioner shall provide prior notice to the Board of the nature and extent of any outside employment or consulting performed on the Commissioner's personal time and such employment or consulting shall be subject to approval of the Board, said approval not to be unreasonably withheld.

3. COMPENSATION.

a. **Salary.** The Commissioner shall receive an annual salary of \$225,000. This annual salary rate shall be paid to the Commissioner in accordance with the schedule of salary payments provided for officials listed in KRS 18A.115(1)(e) or other applicable statutes. The Commissioner's salary shall be reviewed annually by the Board in conjunction with its annual evaluation of the Commissioner's performance. The Board may increase the Commissioner's salary, but any increase shall not be considered a New Agreement or extension of this Agreement unless expressly stated in writing.

As additional compensation, the Commissioner shall be entitled to receive the proceeds of an agency restricted trust account equal to \$17,000 annually and the interest earned by investing the funds in the restricted account in the state's short-term investment pool, for the duration of the contract; however, said restricted trust account proceeds shall not be payable to the Commissioner, until and unless the Commissioner satisfactorily completes the full four (4) year

contract term specified in Section 1 of this contract. If the Commissioner, for any reason, fails to complete the full contract term, with the exception of death or disability which renders him unable to perform the professional duties and responsibilities of office, the Board shall make no payment to the Commissioner pursuant to this section and any accrued sums or benefits of the trust account shall remain property of and revert to the Board.

b. Vacation and Other Benefits. The Commissioner shall be entitled to all the benefits applicable to employees as defined under KRS 18A.115(1)(e) not specifically addressed by the provisions of this contract, including but not limited to vacation and illness benefits and leaves, any other forms of insurance protection, retirement program, tax-sheltered annuities, and other unclassified employee benefits.

Memberships in professional organizations relating to education may be furnished by the Board for the benefit of the Commissioner.

c. Expenses. The Board shall reimburse the Commissioner for all reasonable expenses furthering the Board's business, including expenses for actual and necessary travel and similar items pursuant to KRS 156.148(4), regulation and Board policy, as applicable. Reimbursement of the Commissioner's expenses will be reviewed by the Board's Audit Committee. For relocation expenses incurred as a result of entering into this employment contract, the Commissioner shall be reimbursed up to \$10,000. Relocation services shall be obtained by the Commissioner by soliciting bids and utilizing the lowest and best bid for services. The Commissioner shall be eligible to seek

reimbursement for mileage or airline ticket costs for one (1) round trip per month to the Commissioner's residence in the state of North Carolina for a period of six (6) months or until his North Carolina residence sale closes, whichever comes first.

d. **Transportation.** The Commissioner may either seek reimbursement for mileage incurred on official state business pursuant to 200 KAR 2:006, or may utilize an approved motor pool fleet vehicle for official state business travel on a trip-by-trip basis pursuant to 200 KAR 40:010 and 200 KAR 40:020.

e. **Medical Examination.** In light of the unique nature of the professional duties of the Commissioner of Education, the Board shall, at its expense, annually provide for a complete medical examination of the Commissioner. Any report of the medical examination shall be given directly and exclusively to the Commissioner. The Board shall be advised in writing by the physician whether the Commissioner continues to have the continued physical fitness to perform his duties, and this report shall be confidential.

4. **PROFESSIONAL LIABILITY.** To the fullest extent permitted by law, the Board shall defend and hold harmless the Commissioner from all expense, liability and loss reasonably incurred or suffered by the Commissioner in the Commissioner's individual capacity, or in the Commissioner's official capacity as agent and employee of the Board, whether civil, administrative or investigative, provided the incident arose while the Commissioner was acting within the scope of the Commissioner's employment. This indemnification shall continue as to the Commissioner even if he has ceased to be Commissioner with respect to acts or

omissions which occurred before his employment ended, and shall inure to the benefit of the Commissioner's heirs, executors and administrators.

The Commissioner may engage counsel pursuant to state contract procedures, if circumstances warrant in the reasonable opinion of the Commissioner, including but not limited to if a conflict exists as regards the defense to such claim between the legal position of the Commissioner and the legal position of the Board.

5. GOALS AND OBJECTIVES. Each year the Board and the Commissioner shall meet to establish goals and objectives for the ensuing year. The goals and objectives shall be reduced to writing and be among the criteria upon which any evaluation is conducted.

6. EVALUATION. The Board shall evaluate and assess in writing the performance of the Commissioner at least once a year during the term of this Agreement. This evaluation and assessment shall be reasonably related to the description of the Commissioner's duties and responsibilities, and the goals and objectives of the Board for the year in question.

At least once each fiscal year, the Board and the Commissioner shall meet in closed executive session (unless specifically prohibited by state law) for the purpose of evaluation of the performance of the Commissioner. In the event that the Board determines that the performance of the Commissioner is unsatisfactory in any respect, the Board shall describe in writing, in reasonable detail, specific instances of unsatisfactory performance. The evaluation shall include recommendations as to areas of improvement in all instances where the

Board deems performance to be unsatisfactory. A copy of the written evaluation shall be delivered to the Commissioner. The Commissioner shall have the right to make a written reaction or response to the evaluation. This response shall be a permanent attachment to the evaluation. Within thirty (30) days of the delivery of the written evaluation to the Commissioner, the Board shall meet with the Commissioner to discuss the evaluation.

7. EMPLOYMENT AND TERMINATION. The Commissioner's employment with the Board shall be at-will and may be terminated as follows:

a. Voluntary Termination. The Commissioner may terminate his employment in his discretion upon written notice to the Chairperson of the Board, ninety (90) days in advance of termination if possible. If this occurs, the Commissioner shall be entitled to his salary and applicable benefits, including transportation, through the date of termination, although no additional benefits shall accrue after delivery of notice.

b. Termination Without Cause. The Board may terminate the Commissioner's employment at any time in the sole discretion of the majority of the entire Board, by providing a minimum of ninety (90) days' prior written notice to the Commissioner.

c. Termination For Cause. The Board may terminate the Commissioner's employment at any time upon written notice to him following a determination in the sole discretion of a majority of the entire Board that there is "Cause," as defined below, for such termination. If this occurs, the Commissioner shall be entitled to the Commissioner's salary and applicable benefits, including

transportation, through the date of termination, less any amount due by reason of any misuse of funds or embezzlement, which shall be due and owing to the Commonwealth immediately.

For purposes of this Agreement, the term "Cause" shall mean the Commissioner is convicted of, or pleads no contest to, any crime, whether a felony or misdemeanor, involving misuse of funds or moral turpitude; or a determination is made by a majority of the entire Board, after giving the Commissioner notice and an opportunity to be heard, in closed or executive session to the extent permitted by law, that in carrying out his duties the Commissioner has engaged in serious neglect of duty or willful misconduct, resulting in material harm to the Department or to the elementary and secondary education system of the Commonwealth.

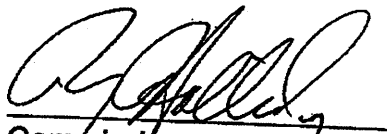
d. **Death or Disability.** In the event of disability or illness or incapacity, after the Commissioner's sick leave and compensatory time have been exhausted, the compensation shall be reinstated only after the Commissioner has returned to employment and undertaken the full discharge of the Commissioner's duties. The Board may terminate this Agreement by written notice to the Commissioner at any time after the Commissioner has exhausted any accumulated sick leave and such other leave as may be available and has been absent from the Commissioner's employment for whatever cause for (i) a continuous period of three (3) months or (ii) 60 working days in a six (6) month period. All obligations of the Board shall cease upon such termination.

8. **GOVERNING LAW.** This Agreement shall be governed by the laws of Kentucky without regard to conflict of law provisions, except that there shall be no presumption as to any interpretation of this Agreement by reason of its having been drafted or revised by either party. The parties further agree that any action to enforce the terms of this Agreement shall be brought only in the Franklin Circuit Court, and they agree to waive any jurisdictional argument, including but not limited to lack of personal jurisdiction or forum non conveniens, with respect to any claim or controversy arising out of or relating to this Agreement.


9. **WAIVER OF BREACH.** Should either party waive breach of any provision of this Agreement by the other party, that waiver will not operate as a waiver of further breach.

10. **MODIFICATION OR AMENDMENT.** This document constitutes the entire understanding and agreement of the parties, and all previous agreements, understandings, and representations are canceled in their entirety and are of no further force and effect. No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties.

11. **SEVERABILITY.** If, for any reason, any provision of this Agreement is held invalid, all other provisions of this Agreement shall remain in effect.



Commissioner of Education



Joe Brothers, Chairperson
Kentucky Board of Education

AMENDMENT TO EMPLOYMENT CONTRACT

This AMENDMENT to the Employment Contract is entered into as of October 8, 2009, between the Kentucky Board of Education of the Commonwealth of Kentucky ("Board") and Dr. Terry Holliday, Commissioner of Education ("Commissioner") and is an AMENDMENT AND MODIFICATION to the Employment Contract entered into as of August 5, 2009, between the Board and the Commissioner as permitted and contemplated by Section 10 of the Employment Contract.

INCORPORATION BY REFERENCE.

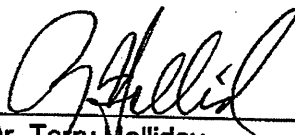
The duly executed and approved Employment Contract between the Board and the Commissioner dated August 5, 2009 is hereby incorporated by reference as if fully incorporated herein.

CONSIDERATION.

In consideration of the services to be provided by the Commissioner to the Board and the Commonwealth, and in consideration of the ability of the Commissioner to voluntarily terminate his employment under the terms of the Employment Contract, the Employment Contract is hereby amended and modified as follows:

COMPENSATION.

Living Expenses. The Commissioner shall be entitled to a living expense stipend of \$1500 per month for the duration of four (4) months from the execution of this Amendment OR from the execution of this Amendment until the Commissioner's primary North Carolina home is sold, whichever occurs first. The sale of the Commissioner's primary North Carolina home shall be considered sold upon the date of closing of the sale.



Dr. Terry Holliday
Commissioner of Education



Joe Brothers, Chairperson
Kentucky Board of Education